



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0244]

Hours of Service of Drivers: Transco, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Transco, Inc.

(Transco) for an exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers.

Transco requests that its drivers be permitted to comply with the 30-minute rest break requirement while performing on-duty, not-driving tasks. The requested exemption would apply to all Transco drivers in its grocery and foodservice divisions who provide driving and delivery services to their customers. Due to the nature of their operation, Transco believes that compliance with the 30-minute rest break rule negatively impacts the overall safety and general health of its CMV drivers, and therefore requests this exemption for all of its company drivers. FMCSA requests public comment on Transco's application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2016-0244 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (614) 942-6477. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2016-0244), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, "FMCSA-2016-0244" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and

would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service (HOS) regulations for drivers of property-carrying CMVs. The final rule adopted several changes to the HOS rules, including a new provision requiring

drivers to take a rest break during the work day under certain circumstances. Drivers may drive a CMV only if 8 hours or less have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break if they want to drive.

Transco seeks an exemption from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). Transco operates through McLane Company, Inc., its commonly-owned affiliate, which delivers food products and other goods to various grocery stores and restaurants throughout the United States. McLane's Grocery and Foodservice divisions maintain distribution centers throughout the country, each employing between 100 and 300 drivers. McLane's drivers provide just-in-time food delivery services to its customers, which include convenience stores, mass merchants, and various dining establishments. Transco contends that its drivers/operations differ greatly from the average long-haul CMV driver for the following reasons:

- Multi-stop daily deliveries: Its drivers typically make daily multi-stop deliveries to Transco's customers, returning to their originating distribution center at the end of each load, which takes an average of 19 hours. On average, each Transco driver makes nine stops per day;
- Significant physical activity: Each delivery requires the driver to get in and out of the CMV on multiple occasions to unload grocery, fresh food, and other products for delivery. Specifically, deliveries to smaller customers, which comprise the majority of each driver's deliveries, include parking the CMV close the customer's store, lowering a ramp from the rear of the CMV to the ground, and

off-loading freight using a two-wheeled cart into the store. For larger customers, the driver delivers the freight at the customer's loading dock; and

- Breaks in the driving routine: Each delivery effectively breaks up the otherwise uninterrupted driving routine. The physical activities that Transco drivers engage in on a daily basis differs significantly from those of long-haul truck drivers who often do not engage in vigorous physical activity.

According to Transco, as a result of these operational differences, the 30-minute rest break requirement does not increase safety when applied to its drivers; instead, the applicant claims the requirement may very well decrease road safety for its drivers. For the typical long-haul CMV driver, the 30-minute rest break serves as an opportunity to break the monotony of driving and relieve some of the stress of continuous driving, but for Transco's drivers, by the nature of the work they currently have breaks – which includes physical exercise – several times each day.

Additionally, Transco states that the 30-minute rest break requirement causes its drivers to travel over 8.2 million additional miles each year on more than 18,000 additional loads. This increase in miles traveled results in eight additional reportable accidents per year, and also requires Transco CMVs to use over 1.3 million more gallons of fuel each year. This influx of CMVs on public highways also increases congestion, and wear on critical infrastructure. The 30-minute rest-break requirement also degrades the health of Transco's drivers as leading clinical studies reveal sedentary activities substantially increase the risk of cardiovascular disease among adults. By insisting that the rest-break requirement be performed off-duty, it essentially forces Transco's drivers to stop physical activity and become sedentary.

Transco believes that the granting of this exemption would offer two benefits – (1) the exemption would reduce the number of motor vehicle accidents and congestion on public roads by reducing the overall miles travelled to serve its customers; and (2) the exemption would increase the health of their drivers by increasing their physical activity through the course of their deliveries and substantially reducing any sedentary periods. Transco contends that under the exemption, its operations would maintain a level of safety equivalent to, if not greater than, that achieved by complying with the regulation. In its application, Transco lists a number of on-going company safety activities already in place to provide continuous training to drivers about both safety policy violations and driving behaviors that increase risk. These activities include on-board visual monitoring systems, Automatic On-Board Recording Devices, driver training, weekly safety inspections, full compliance assessments, and periodic safety committee meetings, which Transco contends would ensure an equivalent level of safety if the requested exemption is granted.

A copy of the Transco's application for exemption is available for review in the docket for this notice.

Issued on: September 15, 2016

Larry W. Minor
Associate Administrator for Policy

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